NO. 75-7005

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

TONY LEROY WATKINS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner contends that the district court abused its discretion by admitting relevant evidence whose probative value was outweighed by its prejudicial effect.

Following a jury trial in the United States District Court for the Northern District of Georgia, petitioner was convicted of knowingly transferring four United States savings bonds bearing forged endorsements, in violation of 18 U.S.C. 473. He was sentenced to three years' imprisonment, to be served consecutively to the state sentence then being served. The court of appeals affirmed per curiam (Pet. App.).

The evidence at trial showed that on August 15, 1974, forty United States savings bonds, with an approximate face value of $2,250, were stolen from Joseph Lee Camp in Atlanta, Georgia (Tr. 17-19). On August 24, 1974, an informant told Secret Service Agent Barry Sternberg that a person called "Tony" possessed about $3,000 worth of stolen bonds payable to Joseph Camp and was trying to locate a buyer (Tr. 27-28). Agent Sternberg

then arranged a meeting between petitioner and Agent Dwight Ellison, at which petitioner told the undercover agent that four of the bonds had been endorsed "by a friend of his" who was unsuccessful in cashing them "because she did not have sufficient identification" (Tr. 28, 73, 97). After some negotiation, petitioner sold the forty bonds stolen from Camp to Agent Ellison for $475. Petitioner was arrested by Agent Sternberg shortly thereafter (Tr. 21, 97-99).

The four bonds bearing the forged endorsements were introduced into evidence at trial (Tr. 22-23, 25-26). In addition, thirty-one of the other unsigned bonds sold by petitioner to Agent Ellison were admitted, although they had not been specified in the indictment (Tr. 87). Petitioner's sole contention is that the district court abused its discretion in admitting into evidence the United States savings bonds not charged in the indictment, claiming that they constituted proof of another crime and that their probative value was outweighed by their "prejudicial effect and confusion of the issues" (Pet. 7).

As petitioner concedes (Pet. 6), the question of admissibility of relevant evidence is addressed to the sound discretion of the trial court, which must determine whether the probative value of the evidence is outweighed by its prejudicial effect. United States v. Rocha, 527 F. 2d 423, 429 (C.A. 5), certiorari denied, No. 75-6432, June 7, 1976; United States v. Chapin, 515 F. 2d 1274, 1284 (C.A.D.C.), certiorari denied, 423 U.S. 1015. Each of the bonds introduced in evidence here was sold by petitioner to Agent Ellison during the same transaction. Since only those bonds bearing a forged endorsement came within the scope of 18 U.S.C. 473, they alone were charged in the indictment. Nevertheless, the remaining bonds were part of the same criminal event and unquestionably were relevant to petitioner's intent. */ Accordingly, the district court did not abuse its discretion in admitting the evidence.

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*/ Even assuming that the unsigned bonds constituted evidence of another crime, the settled rule is that such evidence may be (continued)

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

SEPTEMBER 1976.

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*/ (continued) admitted to prove "motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Rule 404(b), Fed. R. Evid. See, e.g., Nye & Nissen v. United States, 336 U.S. 613, 618. Furthermore, although petitioner contends that the court erred in not giving a cautionary instruction as to the purpose for which the unsigned bonds were admitted, he neither requested such a limiting instruction at trial nor objected to its omission. The trial court was not required to give such an instruction sua sponte. See Petley v. United States, 427 F. 2d 1101, 1106 (C.A. 9), certiorari denied, 400 U.S. 827; United States v. Solomon, 422 F. 2d 1110, 1114 (C.A. 7), certiorari denied sub nom. Sommer v. United States, 399 U.S. 911.